

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

KATHLEEN MILLER,

Plaintiff,

V.

VERIZON COMMUNICATIONS INC.,

Defendant.

Civil Action No. 05-30117-KPN

## **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant Verizon Communications Inc. (“Verizon”), by and through its undersigned attorneys and pursuant to Fed. R. Civ. P. 56, moves for summary judgment on all claims against it by Plaintiff Kathleen Miller (“Ms. Miller”). Ms. Miller alleges discrimination and retaliation on the basis of disability within the meaning of M.G.L. c. 151B and the Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.* Verizon is entitled to judgment as a matter of law on the undisputed facts, for the following reasons:

- Ms. Miller does not have a handicap or disability within the meaning of the state or federal act, because she was not substantially limited in a major life activity.
- Ms. Miller is not a “qualified individual,” as she was not able to perform the essential job function of regular attendance, with or without reasonable accommodation.
- Ms. Miller was not entitled to a reasonable accommodation, since she was neither disabled nor a “qualified individual.” Furthermore, she refused to engage in an interactive process with Verizon; her request to be allowed sporadic, unplanned time off was unreasonable; and (even though it was not required to do so) Verizon

accommodated her by applying its disciplinary process more leniently than otherwise would be the case given Ms. Miller's lengthy history of absenteeism.

- Ms. Miller cannot prove that Verizon terminated her because of her alleged disability.
- The actions that Ms. Miller claims as the basis for her retaliation claim do not amount to an "adverse job action," and she has no evidence of retaliatory motive in any event.

In further support of its Motion, Verizon incorporates its Statement of Undisputed Facts with attached exhibits and Memorandum of Law, both submitted with this Motion.

WHEREFORE, Verizon respectfully requests that the Court grant its Motion for Summary Judgment; enter judgment in its favor; award it the costs of this action; and enter such other relief as the Court deems proper.

VERIZON COMMUNICATIONS, INC.,  
By its attorneys,

/s/ Timothy P. Van Dyck

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### **REQUEST FOR ORAL ARGUMENT**

Defendant respectfully requests that the Court schedule oral argument on its Motion for Summary Judgment.

/s/ Timothy P. Van Dyck

Timothy P. Van Dyck (BBO #548347)

**LOCAL RULE 7.1 CERTIFICATION**

I certify that at the status conference on April 14, 2006, Plaintiff's counsel and I conferred in person in a good faith effort to resolve or narrow the issues presented by the above Motion. We were unable to do so.

/s/ Timothy P. Van Dyck

Timothy P. Van Dyck (BBO #548347)

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on May 25, 2006, and that there are no non-registered participants.

/s/ Timothy P. Van Dyck

Timothy P. Van Dyck (BBO #548347)